89-1086

Supreme Court, U.S.
FILED
JAN 3 1990
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1989

SARAH KLUMPNER, a minor, by
RICHARD KAHN, her Guardian ad Litem,

Petitioner

V.

GEORGE H. KLUMPNER

Respondent

ON WRIT OF CERTIORARI FROM THE
ILLINOIS SUPREME COURT

PETITIONER'S APPENDIX
Volume One

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ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL 02706
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October 5, 1989

Mr. Robert E. Burke
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No. 68840 - Sarah Klumpner, a Minor, et al., etc., petitioner, v. George H. Klumpner, respondent. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 27, 1989.

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

March 31, 1989

Sarah Klumpner, a minor, by
Richard Kahn, her Guardian
ad Litem,

Plaintiff-appellee

v.

George H. Klumpner,

Defendant-appellant

William J. Harte, David J. Walker, of counsel, William J. Harte, Ltd., Chicago, for defendant-appellant.

Robert E. Burke, McHenry, for plaintiff-appellee.

Presiding Justice MURRAY delivered the opinion of the court:

Defendant George H. Klumpner appeals from an order of the circuit court of Cook County denying his motions to vacate the

registration of a foreign judgment and for a change of venue.

The foreign judgment at issue in this matter was entered by the Fourth Judicial District Court of Hennepin County, Minnesota, in 1984 after a number of proceedings instituted first in Illinois and subsequently in Minnesota. Specifically, on August 13, 1980, Judith Klumpner filed a petition for dissolution of her marriage to George in the circuit court of the Nineteenth Judicial Circuit, Lake County, Illinois, and sought custody of their minor child, Sarah, born December 31, 1978. Shortly thereafter, she left the marital home, taking Sarah with her without court approval, and moved to Minnesota where her brother, Richard Kahn, resided. On September 3, 1980, Judith filed an amended petition alleging that George was guilty of extreme and repeated mental

cruelty. On September 11, 1980, the court granted George visitation with Sarah. Judith subsequently filed a petition to vacate the visitation order, alleging George had psychiatric problems, was an alcoholic, and was a danger to Sarah. On September 24, 1980, George sought a rule to show cause against Judith, alleging she had refused to comply with the court's visitation order and had taken Sarah to a location unknown to him. George also subsequently filed a counter-petition for a dissolution of the parties' marriage, and sought custody of Sarah. On September 26, 1980, the court appointed an attorney for Sarah. That attorney later executed an affidavit wherein he stated that during approximately one year while he served as Sarah's attorney, he had uncovered "no evidence of wrongdoing" by George relative to any allegations made by Judith.

On October 17, 1980, George filed a second petition for rule to show cause against Judith because she continued to refuse to allow him visitation with Sarah and was keeping her at a location unknown to him. On the same date, the court ordered the parties and Sarah to undergo psychiatric evaluation by a court-appointed psychiatrist and that its visitation order be given full effect.

The court entered a judgment of dissolution on July 9, 1981. On August 24, 1981, pursuant to an amended judgment, custody of Sarah was awarded to Judith by agreement of the parties, and George was to have visitation with Sarah in accordance with a schedule attached to the judgment. By an order dated September 2, 1981, the court specifically fixed George's visitation times through the summer of 1982 and expressly provided that visitation would be

redetermined more liberally thereafter. On October 5, 1981, Judith filed an action in the Family District Court of Minnesota, entitled In Re Custody of Sarah Nicole Klumpner, seeking to restrict George's visitation rights with Sarah. The Minnesota court dismissed the case on February 2, 1982, based on its ruling that Illinois had continuing primary jurisdiction over the matter; prior to the dismissal of Judith's action in Minnesota, George had filed a petition for change of custody in Lake County on December 28, 1981. On April 4, 1982, Judith also filed a petition in Lake County for modification of the marriage dissolution judgment, seeking to terminate George's visitation rights with Sarah based on her allegations that George had sexually abused Sarah during his visit with her in Minnesota on September 7, 1981, that he was an

alcoholic, and that he had psychiatric problems.

The Lake County court conducted hearings on the parties' petition on June 10 and September 7, 1982. During the June 10 hearing, Dr. Stanley W. Shapiro, Judith's psychiatric expert who practiced in the St. Louis-Minneapolis area, testified that based on two interviews with Judith and 35-month-old Sarah, George had sexually abused Sarah on September 7, 1981, in Minnesota. George's expert testified to the contrary, this expert examined George and Judith, but not Sarah. At the September 7, 1982, hearing, Judith alleged that George had again abused Sarah on September 6, one day prior to that hearing. In describing the September 1982 incident, Judith referred to similar phrases allegedly used by Sarah and communicated to Dr. Shapiro concerning the September 1981 alleged

molestation. No testimony was given by either of the parties' medical experts at the September 7 hearing regarding this alleged second incident. Closing arguments were made on September 21, 1982. On October 1, 1982, the court denied both parties' petitions; the court ruled that custody of Sarah should remain with Judith, found that there was no credible evidence that George ever physically or sexually abused Sarah, and found that Judith's belief that George's visits with Sarah were detrimental to her health was unsupported by any credible evidence and was irrational. The court further ordered that the parties and Sarah submit to extended psychiatric counseling, allowed George specific visitation with Sarah in Cook County, and continued the cause to February 11, 1983, for a status hearing concerning the progress of the counseling and

as to visitation.

Judith and George both filed appeals from the September 21 order in Lake County. Judith subsequently filed two additional appeals from an order entered December 29, 1982, wherein the Lake County court found her in contempt for refusing to comply with its visitation orders and required her to obtain a $5,000 surety bond to insure her compliance thereafter, and an order dated January 13, 1983, denying, among other requested relief, her motion to vacate the December 29 order.

On December 19, 1983, the Second District of this court, in an unpublished Rule 23 opinion (In re Marriage of Klumpner, 119 Ill.App.3d 1168, 83 Ill.Dec. 954, 471 N.E.2d 253), affirmed the trial court's orders denying George's and Judith's petition for change of custody and termination of George's visitation rights, respectively,

stating that where the evidence was conflicting, the trial court was in a far better position to determine the credibility of the witnesses. The court, however, reversed the trial court's order finding Judith in contempt of court but affirmed the order as to the requirement of posting a bond to assure compliance with the court's orders of George's visitation with Sarah. A subsequent petition for leave to appeal to our supreme court filed by Judith was denied.

Apparently shortly after the denial of Judith's petition for leave to appeal to the supreme court, Richard Kahn, Judith's brother, filed an action as guardian ad litem of Sarah in the juvenile division of the Fourth Judicial District, Hennepin County, Minnesota, entitled In re the Matter of the

Welfare of Sarah Klumpner,[1] to have Sarah adjudicated a dependent and neglected child. The identical allegations of sexual abuse of Sarah by George on September 7, 1981, and September 6, 1982, were reasserted in this action. The Court conducted hearings on February 13-17, 23, and 24, 1984. In rendering its decision that George had sexually abused Sarah, the Minnesota court conceded that its findings contravened those of the Illinois courts, but stated its decision was based on "significant differences" in the evidence presented; i.e., the court relied heavily on the testimony of Dr. Shapiro based on his interviews with Judith and Sarah subsequent to the Lake

[1]It is unclear from the record when this action was filed and whether Richard Kahn was in fact ever legally the guardian ad litem of Sarah. However, in later Minnesota proceedings concerning this matter, the court did appoint a guardian ad litem other than Richard Kahn.

County proceedings and decisions. A disposition hearing was set for June 5, 1984. Prior to that time, George sent a letter to the court stating he would not appear at the hearing, asserting, among other reasons, that the Minnesota trial judge in the juvenile proceeding was not impartial (he had attended the same law school as Daniel Schermer, Judith's former Illinois babysitter and "new" husband who was openly seeking to adopt Sarah); the evidence presented in the proceeding was "stale, manufactured or paid for"; and the juvenile court's decision was contrary to Illinois' interpretation of the almost identical evidence. The court subsequently terminated George's visitation rights until further order of the court.

At the time the Minnesota juvenile court proceeding was filed, a tort action was filed in the Minnesota district court on behalf of

Sarah for money damages against George. Based on the juvenile court's findings that George had sexually abused Sarah, the district court awarded damages to Sarah in the tort action against George in the amount of $325,000.

On April 9, 1986, Richard Kahn, on behalf of Sarah, filed a petition in the circuit court of Cook County to register the Minnesota judgment. On June 24, 1986, George filed a motion to set aside the registration, arguing that the judgment was invalid because it was based on the findings of the Minnesota juvenile court which lacked primary subject matter jurisdiction, that that court failed to give full faith and credit to Illinois' decision on the same issues, and the doctrine of res judicata precluded the Minnesota juvenile court from rehearing the case which had been "already heard in Illinois." The

Cook County court denied the motion without prejudice and with leave to amend.

George filed an amended motion, again asking the court to set aside the registration of the judgment and, in the alternative, requested an evidentiary hearing in order to "apprise the court of certain unusual facts surrounding the Minnesota judgment," i.e., counsel for the court-appointed guardian ad litem attended the same law school that Dan Schermer and the trial judge attended (graduating in 1972, 1969, and 1971, respectively), that Dan Schermer's father represented Richard Kahn, the petitioner and alleged guardian ad litem of Sarah, and that these relationships were never disclosed to George or made a matter of record in the juvenile court proceedings.

On March 18, 1987, George filed another motion seeking a change of venue from Cook

County to Lake County. Both motions were denied, as was George's subsequent motion for reconsideration of those denials, and this appeal followed.

George, in opposing registration of the Minnesota judgment, contends: (1) the judgment sought to be registered is void because it was based on the decision of the Minnesota juvenile court which did not have subject matter jurisdiction or, in the alternative, because Illinois had primary jurisdiction; (2) the Minnesota judgment should not be enforced in Illinois because the minor child was collaterally estopped from prosecuting her tort action in Minnesota; (3) Illinois should not give full faith and credit to Minnesota's judgment because Minnesota failed to give Illinois' judgment full faith and credit and ignored the principle of res judicata; and (4) the

trial court erred in denying George's motion for a change of venue from Cook County to Lake County.

A foreign judgment is not conclusive if, among other reasons, the foreign court did not have jurisdiction over the subject matter. (Ill.Rev.Stat.1985 ch. 110, par. 12-621(a)(3).) The procedures by which a State court examines into the question of the jurisdiction of the court of a sister state is a matter within the control of the States. (Adam v. Saenger (1938), 303 U.S. 59, 58 S.Ct. 454, 82 L.Ed. 649.) We conclude that the Uniform Child Custody Jurisdiction Act (UCCJA), which has been adopted by both Illinois (Ill.Rev.Stat.1987, ch. 40, par. 2101 et. seq.) and Minnesota (Minn.Stat.Ann. Supp. Sec. 518A.01 et. seq. (West 1989(and applied to visitation rights as well as child custody (Noga v. Noga (1982), 111 Ill.App.3d

328, 67 Ill.Dec. 18, 443 N.E.2d 1142), is dispositive of the jurisdictional issue in this appeal. Under the UCCJA, "'jurisdiction' refers not to the due process limits of potential subject matter or personal jurisdiction [citation], but rather to the legislature's discretionary limitation upon the exercise of existing jurisdiction." (Noga, 111 Ill.App.3d at 330, 67 Ill.Dec. at 20, 443 N.E.2d at 1144.) Thus, a trial court, in order to exercise original jurisdiction (In re Marriage of Dagher (1986), 145 Ill.App.3d 379, 99 Ill.Dec. 269, 495 N.E.2d 1004), as well as continuing jurisdiction over child custody and visitation determinations, must meet certain jurisdictional criteria, regardless of whether that court entered the original decree and specifically retained jurisdiction for enforcement thereof (Noga v. Noga (1982),

111 Ill.App.3d 328, 67 Ill.Dec. 18, 443 N.E.2d 1142; see also Ill.Rev.Stat. 1987, ch. 40, par. 2104 and Minn.Stat.Ann. Supp. Sec. 518A.03 (West 1989)). The same criteria also controls with respect to questions of when a court of one state must recognize and enforce a foreign custody decree or when a court of one state may modify a custody decree rendered by a sister state. Even if a court meets that criteria, however, it may decline to exercise its jurisdiction, and we believe it must in some cases, if it finds that it is an inconvenient forum for making such determinations, under the circumstances of the case, and that a court of another state is a more appropriate forum. (Noga v. Noga (1982), 111 Ill.App.3d 330, 67 Ill.Dec. 18, 443 N.E.2d 1142; Ill.Rev. Stat. 1983, ch. 40, par. 2108; Minn.Stat.Ann.Supp. Sec. 518A.07; Noga, 111 Ill.App.3d at 331, 67 Ill.Dec. at

19, 443 N.E.2d at 1143.) Illinois' and Minnesota's statutes are almost identical with respect to the factors to be considered in determining the inconvenience of a forum. Most pertinent to the instant action is the provision that "if the exercise of jurisdiction by a court of this State would contravene any of the purposes stated in Section 2 of this Act," the court may decline jurisdiction. Ill.Rev.Stat.1983, ch. 430, par 2108; see also Minn.Stat.Ann.Supp. Sec 518A.03 (West 1989).

In Illinois, the general purposes of the UCCJA, among others, are to:

> "1. avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;
>
> * * * * * * *
>
> 4. discourage continuing controversies over child custody in the interest of greater

stability of home environment and of secure family relationships for the child;

5. deter abductions and other unilateral removals of children undertaken to obtain custody awards;

6. avoid relitigation of custody decisions of other states in this State to the extent to which the avoidance of such relitigation is feasible; ***." (Emphasis added.) (Ill.Rev.Stat. 1983, ch. 40, par. 2102.)

Minnesota's provisions of section 518A.01, subdivisions 1(a), (b), and (c) correspond with Illinois' provisions 1, 5, and 6 of section 2, respectively. Although the Minnesota Statute does not contain a specific provision similar to our provision 4. of section 2, it is clear that the purpose of provision 4. is encompassed by a language contained in section 518A.01, subdivision 1(a) of the Minnesota statute, i.e., "the best interest of the child." See Beier v. Beier (Minn.App.1985), 371 N.W.2d 52 (the

purpose of the UCCJA is to minimize hardships on children by reducing opportunities for interjurisdictional controversies over child custody).

Another pertinent provision in both the Illinois and Minnesota statutes provides:

> "Sec 13. Binding Force and Res Judicata Effect of Custody Judgment. A custody judgment rendered by a court of this State which had jurisdiction under Section 4 binds all parties who have been served in this State or notified in accordance with Section 6 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to these parties the custody judgment is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this Act." (Emphasis added.) Ill.Rev.Stat. 1983, ch. 40, par. 2113; see also Minn.Stat.Ann.Supp. Sec. 518A.12 (West 1989).

[1] Based on the foregoing, we find in the instant case that the Illinois courts'

decisions were res judicata of the Minnesota juvenile court proceeding and, additionally, that the Minnesota court lacked jurisdiction to enter its judgment because the exercise of its jurisdiction was in contravention of the purposes for which the UCCJA was enacted.

[2] We first observe that the full faith and credit clause of the United States Constitution (U.S. Const., art. IV, Sec. 1) requires an application of res judicata where the parties involved in a matter are the same, or those in privity with them, and the cause of action and the subject matter of both suits are the same (Hays v. Louisiana Dock Co. (1983), 117 Ill.App.3d 512, 72 Ill.Dec. 687, 452 N.E.2d 1383). Here, the Minnesota juvenile court apparently believed that the Illinois decisions were not res judicata of the proceeding before it because it found there was a "significant difference"

in the evidence presented to it subsequent to the Illinois decisions. Specifically, the Minnesota court relied heavily on Dr. Shapiro's additional nine interviews with Sarah from September 13 to November 18, 1982, after George allegedly sexually abused Sarah a second time during a visit with her on September 6, 1982. We find, however, that the Minnesota court's representation that Dr. Shapiro's later testimony before it amounted to "significant differences in the evidence from that presented in the Illinois court to be factually unsupported by its written findings of fact and memorandum attached in support thereof and the record of proceedings in Illinois".[2] Like the Minnesota court's

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[2]Section 518A.22 of the UCCJA provides that "[i]f a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this state, the court of this state upon taking jurisdiction of the case shall request of the court of the other state a certified

findings of fact which mirror all of Judith's allegations considered and rejected by the Illinois trial and appellate courts, Dr. Shapiro's testimony before the Minnesota court concerning his later interviews with Sarah mirror Judith's allegations and the sexual descriptions of the alleged September 6, 1982, incident made during the September 7, 1982, hearing in the Lake County court. This "evidence" was therefore presented, considered, and rejected by the Lake County court and the Second District of this court.

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copy of the transcript of any court record and other pertinent documents which have been preserved by the court of the other state." (Emphasis added.) (Minn.Stat.Ann.Supp. Section 518A.22 (West 1989); see also Ill.Rev.Stat.1983, ch. 40, par. 2123.) Although there was no pending proceeding in Illinois at the time the juvenile court proceeding was filed, we believe that considering the seriousness of a custody/visitation rights matter that the Minnesota court would nonetheless request the record of proceedings in Illinois. It is unclear whether the Minnesota court did so and had the same record before it as this court.

We do not find any "significant difference" in this evidence merely because it was related by Judith at the September 7, 1982, hearing, rather than Dr. Shapiro, since the identical situation - Judith's allegations and descriptions concerning the September 7, 1981, alleged incident of sexual abuse and Dr. Shapiro's testimonial corroboration in similar terms - was also considered and rejected by the Illinois courts, apparently the second alleged incident carried no more weight than the first. In effect, therefore, the Minnesota juvenile court relitigated the facts presented to and disposed of by the Illinois courts, since the Minnesota cause of action and its subject matter, although brought in the juvenile court, constituted the same cause of action and subject matter litigated in the juvenile court, constituted the same cause of action and subject matter

litigated in Illinois. Moreover, Sarah, upon whose behalf the juvenile court proceeding was instituted, was in privity with Judith in the Illinois proceedings, i.e., Sarah's interests were closely aligned with Judith's, thereby making Judith her virtual representative. (See Johnson v. Nationwide Business Forms, Inc. (1981), 103 Ill.App.3d 631, 59 Ill.Dec. 339, 431 N.E.2d 1096.) In light of the foregoing, therefore, the Illinois courts' judgments were res judicata of the Minnesota juvenile court action.

(3) We also find that the Minnesota juvenile court lacked jurisdiction because its exercise of jurisdiction contravened the purposes underlying the UCCJA. We first note that plaintiff's reliance on Sullivan v. Sullivan (1981), 98 Ill.App.3d 928, 54 Ill.Dec. 207, 424 N.E.2d 957 - for the proposition that where another state fails to

give full faith and credit to a judgment of Illinois, Illinois nonetheless is obligated to give full faith and credit to the other state's later judgment - is misplaced under the circumstances here. At issue in Sullivan was the payment of past due support and maintenance obligations. The case before us is a custody matter. Certainly the custody of children and payment of monies require different considerations, as evidenced by UCCJA which specifically provides that a "custody determination," which includes visitation rights, does not include a decision relating to child support of any other monetary obligation of any person. (Ill.Rev.Stat. 1983, ch. 40, par. 2103.02; see also Minn.Stat.Ann.Supp. Sec. 518A.-02(b).) Accordingly, we must consider application of the full faith and credit clause in conjunction with the specific

provisions of the UCCJA and its underlying policy considerations.

As stated previously, recognition of the full faith and credit clause requires application of res judicata where the parties involved are the same, or those in privity with them, and the cause of action and the subject matter of both suits are the same. (Hays v. Louisiana Dock Co. (1983), 117 Ill.App.3d 512, 72 Ill.Dec. 687, 452 N.E.2d 1383.) The UCCJA also provides for application of res judicata (Ill.Rev.Stat.1983, ch. 40, par. 2113; see also Minn.Stat. Ann.Supp. Sec. 518A.12 (West 1989). To give full faith and credit to the Minnesota Juvenile court's judgment over Illinois' would require us to completely ignore the res judicata doctrine in contravention of the purposes of the UCCJA, three of which most importantly are to avoid continuing

controversies over child custody in the interest of greater stability in the home environment and secure family relationships for the child, to avoid harmful effects on the well-being of the child, and to avoid relitigation of custody matters. (Ill.Rev.Stat. 1983, ch. 40, par. 2102; Minn.Stat.Ann.Supp. Sec. 518A.01.) In other words, were we to hold otherwise, an unsuccessful litigant in Illinois would be free to relitigate in other state forums, after establishing a six-month residence and complying with other jurisdictional requirements of the UCCJA in those states which have adopted it, until a favorable forum was found which would interpret the same evidence before it as "significantly different" from the evidence presented in the original forum. During the interim, a minor child would be subjected to continuous instability in the

family relationship and suffer harmful effects to her well-being. This is not the same situation which would obtain and for which the UCCJA provides where new circumstances, never litigated, would arise.

[4] Accordingly, notwithstanding the general rule that where inconsistent judgments exist, the full faith and credit clause requires the latest judgment to be controlling in a third action between the parties (Treinies v. Sunshine Mining Co. (1939), 308 U.S. 66, S.Ct. 44, 84 L.Ed. 85), we believe that it is of paramount importance that where child custody and visitation rights are involved, the doctrine of res judicata must be strictly applied prior to a second forum assuming jurisdiction over such matters involving the same facts and same parties, in compliance with the purposes of the UCCJA, so that a third action between the

same parties based on the same facts cannot arise.

[5] Here, Minnesota's exercise of jurisdiction in the juvenile proceeding contravened the policy considerations for which the UCCJA was enacted; it should have declined jurisdiction under section 8 of the UCCJA (Ill.Rev.Stat.1983, ch. 40, par. 2108(c)(5), Minn.Stat. Ann.Supp. Sec. 518A.07, Subd. 3(e). Its judgment is therefore void. As a result, the Minnesota judgment rendered in the tort action on behalf of Sarah and registered in this State, which was based on the juvenile court's findings of sexual abuse of Sarah by George, is also void. See Crist v. Quam (1984), 126 Ill.App.3d 167, 81 Ill.Dec. 421, 466 N.E.2d 1223; Ill.Rev. Stat. 1987, ch. 110, par. 12-621(a)(3).

[6,7] We further find, in any event,

that Sarah was collaterally estopped from prosecuting a tort action against George in Minnesota based upon her allegations of George's sexual abuse of her. Collateral estoppel applies where the following requirements are met: (1) the issue decided in the prior adjudication is identical to that presented in the action in question; (2) the party against whom estoppel is asserted is the same as or in privity with a party to the prior adjudication. (Illinois State Chamber of Commerce v. Pollution Control Board (1979), 78 Ill.2d 1, 34 Ill.Dec. 334, 398 N.E.2d 9.) As discussed above, these requirements have been met.

In light of the foregoing, we find it unnecessary to address any other issues raised in this appeal.

The judgment of the circuit court of Cook County granting registration of the

Minnesota judgment is reversed.

REVERSED.

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

No. 87-3745

IN THE MATTER OF)
SARAH KLUMPNER, a minor, by)
RICHARD KAHN, her guardian ad Litem,)
)
Plaintiff-Appellee,)
)
v.)
)
GEORGE H. KLUMPNER,)
)
Defendant-Appellant.)

ORDER

This cause coming on to be heard on motion of plaintiff-appellee to file her petition for rehearing instanter, and the court having allowed said motion and having considered defendant-appellant's objections thereto, as well as the petition for rehearing:

IT IS HEREBY ORDERED that the petition for rehearing is denied.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW DIVISION

No. 86 L 7855

SARA KLUMPNER,)
)
Plaintiff,)
)
-vs-)
)
GEORGE KLUMPNER,)
)
Defendant,)

REPORT OF PROCEEDINGS had at the hearing of the above-entitled cause, before the Honorable Willard Lassers, Judge of said court, on the 4th day of June, 1987, at the hour of 12:00, o"clock noon.

PRESENT:

MR. EDWARD PARKS
appeared on behalf of the
Plaintiff,

MR. DAVID WALKER
appeared on behalf of the
Defendant.

THE COURT: All right. Let's go onto the ruling. Sorry you folks had to wait, but I have had a long, very long call today.

MR. WALKER: David Walker for the defendant George H. Klumptner.

THE COURT: And you are.

MR. PARKS: Edward Parks on behalf of the plaintiff.

THE COURT: Well, I am ready to rule. And you might as well be comfortable. You might as well sit down. It's going to take me some time. The matter is before me this morning for ruling. On April 9, 1986, the plaintiff filed a petition to register a foreign judgment for $325,000. In August 1986, the defendant filed an amended motion to set aside the registration of the foreign judgment, and recited the facts leading up to the judgment sought to be registered. The party subsequently filed briefs, and the

matter was argued. From the briefs and the other documents submitted on this matter, the following facts appear: On August 24, 1981, the Circuit Court of Lake County, Illinois, entered a judgment dissolving the marriage of George H. Klumpner and his wife whose name I forget. Anybody know?

MR. WALKER: Judith.

THE COURT: Judith Klumpner. The couple had one child Sara. The custody of Sara was given to Mrs. Klumpner, and Mr. Klumpner was given visitation. On September 2, 1981, the Circuit Court of Lake County entered an order setting a visitation schedule. Subsequently there was litigation in Lake County in which Judith asked for the termination of the visiting rights of George Klumpner, charging child abuse, and in particular sex abuse of the child. The husband also filed a petition on December 28,

1981, asking for a change of custody to him.

The matter finally came on for hearing on a post-decree petition before Judge Witt in Lake County, and Judge Witt entered an order which is more than an order but really a brief opinion in which he found that George, and Judith, and Sara were all in need of extended psychiatric counseling in order to effect, and I am not quoting exactly, a normal healthy relationship between George and Sara. It was found to be in Sara's best interest that her mother have custody, and then comes the critical language that there is no credible evidence that George has ever physically or sexually abused or molested Sara.

However, when she does visit with George, Sara's personality demonstrates that such visitation has on occasion caused Sara to become upset and anxious, that Judith is

personally convinced that Sara's exposure to George to visitation is detrimental to Sara. However such belief is factually unsupported by credible evidence and is irrational. Therefore the court denied George's petition for modification of custody, and directed that all three submit to psychiatric counseling. And the judge sets out the reasons for that. He sets a visitation schedule, and set the matter for hearing for status about six month hence. It appears also that one of the primary bases for the claim of sex abuse are the events that occurred on September 7, 1981.

The wife appealed from the order and on December 29, 1983, the Appellate Court for the Second District entered a rule 23 order affirming Judge Witt's order refusing to cut off visitation and also making certain other orders with respect to other matters also

before the Appellate Court. That included a contempt finding against Mrs. Klumpner entered December 21, 1982. The rule 23 order by the Second District was numbers 82-875, 83-7, and 83-129 consolidated. There the court took occasion to say that Judge Witt had abused his discretion and so forth based upon the facts. But the Appellate Court after reviewing the facts at some length concluded at page three, the accusation of sexual molestation of Sara by George was serious. The trial court expressly found no credible evidence that George has ever physically or sexually abused or molested Sara. Particularly where the question is such a sensitive and serious nature and the evidence is conflicting, we realize that the trial court is in a far better position than we to determine the credibility of witnesses. So on that basis the court affirms Judge

Witt's order. And it's in that opinion that we find a discussion of the events of September 7, 1981, the primary events relied upon by Mrs. Klumpner.

Now the scene shifts from Illinois to Minnesota. Following the divorce, Mrs. Klumpner and her child moved to Minnesota, to Minneapolis, and there were various proceedings in the Minnesota courts. The first proceedings was in the Family Court Division of the District Court County of Hennepin. This was a proceedings in which Judith sought to restrain George from exercising his rights of visitation pursuant to the Illinois decree. The court found that Minnesota has jurisdiction, and cited a provision of the Minnesota statutes, see page three. But the court continued, however, it does not have primary jurisdiction since the State of Illinois has not lost jurisdiction

as affirmatively held, that it exercised its jurisdiction and is a court of competent jurisdiction to hear the matter. Therefore there was an order entered February 1, 1982, that that court, that is the juvenile court hereby declines to exercise jurisdiction and the proceeds are dismissed subject to the right of the Illinois court to request this court, that is the juvenile court to take such evidence as it deems necessary and proper. And so forth. This order was entered about five months, four months after the order entered by Judge Witt of October 1, 1982.

We now jump ahead about two years in time to July 26, 1984. And this is now a proceedings in the juvenile court. And it's a disposition order in that court. And Mr. Klumpner was represented by an attorney David W. Skogerboe, S-k-o-g-e-r-b-o-e, who

appeared as counsel and withdrew after presenting the respondent father's written statement. So it's clear that he was new at the proceedings. He had an order and he could have participated, but he elected to simply file the written statement, and then the lawyer withdrew. The opinion incorporates certain findings of fact dated April 25, 1984. The child is ordered to remain in the custody of the mother. The mother has to provide certain psychological services for the child. And in effect, visitation with the father was cut off, and the court stated at paragraph three, page three, before the court will consider reuniting the child with her father, through either supervised or unsupervised visitation, the following case plan must be complied with. Father had to go through a psychological evaluation, and there are all, a number of other steps were set out

in the order.

We come now to the findings of fact that I mentioned previously. And the findings of fact include a statement that the father subsequent to the marriage had undergone-- no, had problems with the abuse of alcohol and drugs. That following the birth of Sara, that Klumpner began to drink heavily, use drugs, involved in pornography and so on. And then there are various statements about the father's abnormal sexual interest in Sara, and a lengthy statement most adverse to the father about the events that occurred particularly on, prior to and on September 7, 1981, when the child was visiting with the father at a Best Western Hotel in Minneapolis, and the powerful effects of that visit. Then on paragraph 14 there is a lengthy recital about a second -- a visit on September 6, 1982, where there is a finding

that of improper behavior on the part of the father with respect to the child.

Finally there was an order that Sara was adjudicated dependent and neglected. The father was barred from all visitation and so. Ncw, finally there is a memorandum attached to the April order, and the second page of that memorandum states, finally it is noted that this court has reached a contrary conclusion to that reached in Illinois shortly after the second episode in September of 1982. While it is argued by respondent that the Illinois court reached its decision while the evidence was still fresh, the intervening period of time has produced significant differences in evidence presented at the tow hearings, not the least of which that Dr. shapiro's testimony regarding what he was able to learn from Sara after nine sessions with her subsequent to the Illinois

hearing.

The evidence presented to this court in February of 1984, is sufficiently convincing under the applicable standard of proof to lead this court to conclude that Sara was abused by her father. So in effect we have a situation where the Minnesota court has rejected the findings of the Illinois court based upon the same incidents. It was unclear to me whether Judge Witt in his order of October 1, 1982, had considered the September 1982 incident. As I read his order, he was considering only the 1981 allegations. But judge -- the judge in Minnesota indicates that he considered, he, Judge Witt considered the September 1982 allegations as well. So I am willing to take it on that basis.

Finally we come to the third court proceedings, and that is the one that occurs,

leading up to the entry of judgment. Now, that is the judgment for $325,000 that was entered by the District court for the Fourth Judicial District on June 21, 1985, in which there was summary judgment as to liability entered against George Klumpner based upon the juvenile court findings, and compensatory damages were sought by Sara Klumpner, a minor by Richard Kahn, K-a-h-n, her guardian ad litem against her father George Klumpner. And in addition of that there was an award of $100,000 for exemplary damages. And there is no question that George was represented by counsel in that proceedings. And indeed he appeared both in that proceedings and in the juvenile court proceedings.

Now on April 7, 1987, I had a hearing on the motion to set aside the registration. And after colloquy with counsel, I asked that counsel just submit a supplemental memorandum

on four separate questions. And the questions were as follows: One, did the husband appear in the district court case. Two, in the juvenile court case and in the district court, did the husband raise the question of full faith and credit in Minnesota of the Illinois judgment. Three, is Sara precluded by the Illinois judgment. And four, did the district court grant summary judgment to Sara as to liability.

Both parties made additional submissions, and I have considered both the original submissions and the supplemental submissions. Of course the foundation stone of this case is the claim by the plaintiff Sara here that this court is without authority to go behind the judgment of the Minnesota court pursuant to the full faith and credit clause which is Article 4, Section 1 of the constitution of the United States.

The first issue raised by the defendant here is that the juvenile court lacked subject matter jurisdiction. And this rests simply on the declaration by the family court in 1982 to the effect that Illinois had primary jurisdiction. And hence the argument goes that the Illinois court may inquire into the question of the jurisdiction of the juvenile court. Two cases are cited in support of that proposition. One is Finley, 105 Illinois 3rd, 1. First district 1982. Finley however, really doesn't go to that proposition. Finley is simply a traditional estoppel case. Finley involved the Finley who is the, at one time, the owner of the Chicago White Sox. There had been some litigation in the Indiana courts in which Finley had made certain statements or taken a certain position. It was held in subsequent Illinois litigation he was bound by the

statement or the position that he took there, and he couldn't take a different position in the Illinois court.

The other case cited by the defendant is Schneider, 89 Illinois Appellate 3rd, 904, first district, 1980. The Schneider case, however, is not a question of subject matter jurisdiction of the court. It is a question of the personal jurisdiction of a New York court under the New York long arm statute. And the court there, our court held simply that the judgment entered into in New York was void because there was inadequate contacts with New York on the part of the defendant so that New York did not acquire jurisdiction over the person of the defendant sufficient to enter and impose judgment.

But apart for those cases, it may be that there is a basis for such a claim. I suppose that to take the extreme case of subject

matter jurisdiction, if we had a situation, let us say, where somebody came into this court and said that I have a divorce decree that was entered by the tax court of the United Sates, it would be inappropriate for this court to say, well, the tax court of the United States lacks subject matter jurisdiction to grant divorces. Its function is to adjudicate claims on income taxes as between the United States and taxpayers. So that the tax court lacks subject matter jurisdiction. But in no sense can we say that the juvenile court lacked subject matter jurisdiction in that sense. The family court had previously determined two years previously as a matter of its decision that it, the family court had jurisdiction, but that Illinois had a superior right to jurisdiction. But that is a far cry from saying that the juvenile court as such lacked subject matter jurisdiction.

And there is no claim made to that event. In any event, that is an issue that could have been and should have been raised in the juvenile court at that time.

The defendant at page six of his original brief argues that he can raise the inference of fraud and the procurement and lack of subject matter jurisdiction. Well, there is no doubt about that. But there is really no claim made here of the fraud and of the procurement of the judgment, nor is there a claim made of lack of personal jurisdiction over the person.

The defendant originally asked this court to be allowed in effect to relitigate the issues that had been litigated already in Minnesota, but I must say that the law is strongly to the contrary and that except for the very -- to the very limited extent that I have already indicated, this court lacks

authority to go behind the Minnesota judgment.

The third claim that was made originally is this: That Minnesota should have given full faith and credit to the Illinois determination, that Minnesota failed to do so, and that therefore Illinois need not give full faith and credit to the Minnesota judgment. This I think is a much more serious matter, and that contention I will consider subsequently.

Let me turn now to the answers to the four questions that I had inquired about. Question number one was, did the husband appear in the district court, and the answer to that is unqualified yes. There is no dispute about that. The second question, did the husband raise the full faith and credit argument in the district court or juvenile court, again the answer is yes. The third

question is, is Sara precluded by the Illinois judgment. And there we have a difference of opinion. The defendant says, yes. And the plaintiff says, no. And the reason the plaintiff says no is that the plaintiff contends that Sara was not a, quote, party, in the technical sense to the Illinois proceedings. And it appears from documents submitted to me that Judge Witt declined to appoint a guardian ad litem for Sara in Lake County. That was Defendant's Exhibit J., but that an attorney for Sara was appointed pursuant to the Defendant's Exhibit A. This question of course is a critical question to the third argument advanced by the defendant in the initial brief. The reason for that is that if Sara was -- is not bound -- was not a party to the Illinois proceedings, a party in the technical sense, then clearly she would not be bound by the

Illinois judgment and whatever issues she wanted to raise in Minnesota she would be free to raise. And we would not have any problems of full faith and credit. The defendant further claims that Sara and her mother were in privity.

For purposes of the remaining portion of this opinion, I am prepared to assume that Sara is bound by the Illinois judgment. I am not convinced of that, but I am prepared to assume. In addition, I am prepared to assume that Judge Witt on October 1, 1982, did indeed have before him and considered the contentions of the mother with respect to conduct in September of 1982. The reason, although again, the fact situation on that, on this record is not clear, but I am going to assume that he did. If you -- if Judge Witt did not consider the September 1982 events claimed to have occurred by the

mother, then of course those were matters that were never addressed by the Illinois court so that there is no problem of full faith and credit under Article 4, Section 1. And the whole question as to at least as to that portion of the judgment as to full faith and credit is inapplicable. And we don't have to ask ourselves the question whether Sara was or was not a party in the technical sense to the Illinois proceedings.

So I come now to the final portion of my focus. And that is on the question of whether this court, that is the proceedings that I now have before me -- I'm sorry. I lost my train of thought.

(WHEREUPON THE REQUESTED PORTION OF THE RECORD WAS READ)

THE COURT: The question therefore that I found that raised a serious question was this: George Klumpner contends that if the

Minnesota court disregarded and failed to give full faith and credit to the Illinois judgment, then I am at liberty to disregard it and not give full faith and credit to the Minnesota judgment. That is the nub of the contention made by George Klumpner. And neither party cited cases on that proposition. And I did some research myself in the library, and I found a case that I think is squarely in point on this issue. And that case -- get me 9 Appellate Third, would you, that is Sullivan against Sullivan, 9 Appellate Third 928, third district 1981.

There we had post-decree litigation with respect to child support. The wife is in Illinois. And the ex-husband had moved to Ohio. And there were various child support orders and maintenance orders entered by the Illinois courts. The matter then was referred to the Ohio courts under URESA, the

Uniform Reciprocal Enforcement of Support Act. And although the matter had been litigated in Illinois, the Ohio court set a different order and declined to follow the Illinois order. And so the matter then came back ultimately to the Illinois courts, and we were presented so -- not we. The Third District Appellate Court was presented with essentially the significant question presented by this case, namely, if the foreign court fails to give full faith and credit to an Illinois decision, nevertheless must the Illinois court give full faith and credit to the decision of a foreign court. That is the issue. The Sullivan court said in 931, we do note, however, that Ohio may well have denied the 1978 Illinois order full faith and credit. It is generally established that one state must recognize a sister state's judgment to the decree that it

is non-modifiable. Then at 932, the Ohio court should have referred to section 510 of our statutes.

In the case at bar, however, the Ohio court modified the Illinois decree within two months of the Illinois decree upon the same set of circumstances which had become res judicata. By refusing to recognize our rules regarding modification, the Ohio court modified a judgment which was not subject to modification in Illinois. Now comes the critical language. Nevertheless even though we believe that the Ohio court may have failed to give our 1978 decree full faith and credit, we are required to give full faith and credit to Ohio's judgment. Any objections Mary had regarding the Ohio modification should have been directly appealed in Ohio and not collaterally attacked as she attempts to do here.

Now I am going to skip some language. Although a minority of jurisdiction hold that where the third action returns to the first forum as in the case at bar, the latest judgment does not control if the second forum refused to give the first forum's judgment full faith and credit, case citations omitted. These holdings are clearly inconsistent with Treinies and demonstrates the parochialism that the full faith and credit clause was intended to prevent with citations.

For this reason the Circuit Court was correct in recognizing the more recent 1978 Ohio decree with respect to past due non-modifiable support and maintenance obligations. And then there is further discussion. But the Appellate court decision is squarely on point. I Shepardized that case. And it is the only case in Illinois that I found

that deals with the problem. And I think it is binding.

So that being the case, for the reasons that I have given, I am going to deny the motion to set aside registration. All right. Thank you.